Docket No: _____

United States Supreme Court

Glenn Henderson
Plaintiff

v.

Sony Pictures Entertainment, et al.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth District

Petition for Writ of Certiorari

Glenn Henderson, Plaintiff pro se
5952 Cliffdale Rd.
Fayetteville, NC 28314
910-867-4931

Questions

1. When can a settlement be challenged?
2. Do state laws affect the challenge of a settlement in federal court?
3. Did I have to dismiss the federal case because a settlement was signed in state court?
4. Is fraud cause to be able to challenge a settlement?
5. Is improper and undue influence from a third party because of actions by a defendant reason to challenge a settlement?
6. Is emotional harm cause by a defendant reason to challenge a settlement that the defendant obtained because of the emotional harm?
7. Is inadequate compensation compared to the damage done a reason to be able to challenge a settlement?
8. Is there due process if points are not addressed or questions not answered?
9. Is it public interest to let the settlement and the way it was obtained stand?
10. Does the first contract, a collective bargaining agreement, that I never broke and never agreed to void, have precedence over and overrule the second contract, the settlement?
11. Do discrimination laws apply to banks in their actions toward others?
12. Does diversity of citizenship give federal courts jurisdiction between litigants from two different states?

13. Should a jury or judge decide if fraud or other contract violations occurred?
14. Do state and/or federal laws allow individuals to be sued under discrimination-related laws?
15. Should this court intervene to make sure employees are allowed to go on jury duty and not be discriminated against in many other illegal ways and instances?

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Table of Cited Authorities

List of all Defendant Parties

Sony Pictures Entertainment, Inc., Paul, Hastings, Janofsky & Walker, LLP, Mellon Bank, Kim Russo, Amy Dow, Holly Lake, James Zapp, Beth Berke, Mike Burkenbine, Yasuko Furuya, Linda Bershad, Adeline Masson, Steve Burlie, Michele Stein, Stephen Carroll, John Calley, Julie Biehl, Mary Burke, Mark Lebowitz, Bedi Singh, Sherie Smith, Norma Castillo, Elanor De Silva, Karen Otto, Connie at Mellon Bank.

Citations

The District Court found no legal authority about settlements and being depressed, said I appeared to reassert claims, and construed my claim of discrimination by a bank as pursuant to Title VII.

Basis for Jurisdiction

Date appeal affirmed: August 1, 2008
Date of order related to rehearing: January 16, 2009
This Court has jurisdiction because the case was reviewed by the Federal Ninth Circuit Court of Appeals.
Statutory Provision: Petition for Writ of Certiorari may be filed after review by a federal court of appeals.

Constitutional Provisions and Statutes

The Constitution grants equal protection under the Fourteenth Amendment.
The Constitution grants due process under the Fifth and Fourteenth Amendments.

California Civil Code Sections 1689, 1667, 1668, 1670.5, 1565-1589, 1549-1550, 1565-1589, 1688-9, 43, 3525,
Civil Rights Act of 1964.

Statement of the Case and Points

California laws support my case. They affected the dismissal of this federal case because the settlement made in state court, according to Sony's lawyers, required me to ask for dismissal. State law states fraud, undue influence, mental state and getting an advantage because of someone's mental condition, and inadequate compensation can void a contract.

I did not get all my points addressed or all my questions answered.

It is not public interest to allow the settlement to stand or let an employee be harassed, defamed, discriminated against, or fired for serving on jury duty.

The first contract, the Collective Bargaining Agreement (CBA), should still be in effect. It was never legally dissolved. California Civil Code Section 3525 states rights otherwise equal, the first is preferred.

Some issues about Sony's lawyers' belonged in federal court because there was discrimination, Federal Section 1983 issues because the courts were involved, and because of Kimes v. Stone (1976 9th Cir.) about overruling state immunity for court papers. Also, now I live in a different state.

Sony's attorneys and Sony's claims I was a poor performer, did anything wrong or in bad

faith in attempting litigation, or my papers did not make sense is reason to punish them. The lawyers should be disbarred. Sony needs to be restructured into a law abiding company. The district court judge made mistakes but seemed to be acting in good faith. Sony's lawyers must have tricked him. I do not understand why the three member appeals court and the appeals court en banc upheld the mistakes. They upheld dismissal of supposed claims against a person, who was not even a defendant. They upheld that I was trying to re-litigate claims, when I clearly showed the dates and events were different. He said I "appeared to reassert claims." Maybe, because I used similar words like harassment and defamation, the judge was tricked. The appeals court mistakenly upheld that I was claiming a Title VII claim against Mellon. They upheld the district court did not have jurisdiction for claims I made against Mellon, though we were from different states. I addressed these issues but did not get justice. That is incredible.

Maybe four years after I was terminated, Sony put my former supervisor, Kim Russo, on probation, wrote her up, and told her if she did not change, should would be terminated. Sony has now acknowledged and documented what I and others have said all along and what Sony knew all along: Russo was a problem. They knew she was a liar and harasser. They have now documented they have reason to doubt her integrity and

competence. They had many complaints about her from people besides me.

I am rescinding the contract and have been trying to as allowed in CA Section 1689. There was duress, menace, fraud, and undue influence exercised by or with the connivance of the party to whom I rescind. Sony connived to breach the CBA and to get others to believe I was a poor performer. I mistakenly thought I should sign the settlement.

The Mellon issue is the one and only issue I am not sure was okay that I did. I think I could. I want to find out for sure. Sony stated if I wrote a letter or did something else equally bad, I could be terminated. I did not. We had a contract there. Sony did not say Mellon should not have been contacted but said I should not have been the one and did not follow procedures. There was no procedure. The supervisor above my immediate supervisor said I should have said something but should have told Sony's Treasury Department. She said they were the liaison and that I showed I knew because I cc'd them when I emailed Mellon about business. It never occurred to me to speak to treasury. I thought about going to Human Resources. They had refused to help me with problems with my supervisor. I thought Sony might say I should have gone to my supervisor. She was harassing me, defaming me, lying, and her supervisor was enabling her and also harassing and defaming. I felt I had no place to go at Sony. It is incredible that the supervisor said I knew that treasury was

the liaison. She evidently meant they were the one and only liaison and I knew it. I was emailing Mellon occasionally about regular business. That clearly showed I was a liaison. I was not the only one. I also cc'd my supervisor on emails to Mellon, but no one said she was a liaison. Also, my supervisor said I must discuss things with people if I did not like what they did or I could be fired. I attempted that with Mellon. Another Sony employee said she contacted a Sony customer's CEO about unpaid invoices. That was fine with Sony.

Title II of the Civil Rights Act of 1964 states it is unlawful for public businesses to discriminate against some people. Mellon Bank and I were from different states, so federal court had jurisdiction. Mellon did not supervise, train, or hire employees properly. The Mellon bank account I used received maybe 2-3 checks daily on average. Sony had at least one other account with Mellon; I am not sure about activity there. Sony's having an account with few checks was maybe doing Mellon a favor. Mellon must have had some control or influence over Sony. A company must have that to be considered an indirect employer. Also, Mellon must have had that since they caused Sony to punish me. At first, I thought maybe Mellon was trying to resolve the issue. Then I found, according to Sony, someone at Mellon said I said I did not know what I might do. I did not. Such a statement sounds like a threat. Sony also said the Mellon person said I meandered. I did not. That claim

sounds like trying to make me look nonsensible. I was later bothered someone's comments She called on Mellon's behalf to ask me about Mellon's service. Mellon wanted my opinion. That was maybe 1-2 months, before I wrote the letter.

Mellon sounds like someone trying to interfere with my employment and trying to get me punished and harmed. They succeeded. Blender v. Superior Court concerns suing a company for defaming an employee at another company. Mellon caused harm to my relationships and insulted me. CA Civil Code Section 43 says those are actionable. Courts have ruled a person can tell another person not to talk to them. A person can or should be able to tell a person how to talk to someone, i.e. without harassment, insult, or defamation. I wanted to do that. Mellon or their lawyer defamed me in court papers. I want to clear my name.

Sony said my complaint did not go through proper channels. Sony refused to address problems within Sony, so I did not think they would help me with Mellon. I was under all kinds of stress at the time. I was starting to be harassed anew after I had complained about not getting promoted and was responding to Russo's false allegations.

If Sony wanted a good relationship with Mellon, I doubt this case helps. I was told an executive at Mellon was on the board at Sony and used to work there. That would give him power over Sony, which Title VII requires for

a non-employer. Title VII may have applied; I was not claiming so.

The contract was unlawful for causes which did not appear in the terms or conditions. That is in CA Section 1689. The contract did not state Sony had breached the CBA, had lied, defamed me, harassed me, and discriminated against me to get to the settlement offer.

Sony made changes in the settlement I signed compared with one they had offered before, which was the one I thought I was going to sign. I did not get time to think about the changes. A change was that Sony would pay for help for me from an outplacement company, but I had to do it within 6 months. The first settlement offer did not have that limit. I had found a new job 2½ months earlier and did not want to leave so quickly. I felt very lucky to find a job. If I had found a job I liked through outplacement, then I might have been okay with the settlement. Any job without harassment would have probably been better. I did not get 7 or 21 days to think about the new settlement I signed. I might have or probably would have changed my mind if given 7 or 21 days to consider it. That would have been consistent with my previous behavior. I signed two previous settlements and changed my mind after having 7 days to consider them. Someone without an attorney is supposed to get 21 days.

In Kimes, attorneys and litigants do not have state immunity for statements in court papers if Federal Section 1983 is involved.

Sony and their lawyers tried to stop me from getting a fair trial, due process, equal protection, and the right to petition.

The first of two write ups at Sony showed I had done everything right. It showed I had a 100% rate of accuracy, no problem about getting behind, and worked well with others. The second write up discussed the letter to Mellon, showed I made 1 mistake in cash application and showed I guessed wrong when I temporarily put an amount I thought was an overpayment to the next open invoice. I spoke to the collector. She checked. It turned out an invoice was wrong in our accounting system. There were 12 items in the first write-up, a Development Plan. I did three before I was taken off the plan by the supervisor above my immediate supervisor. I let my supervisor know when a check copy was missing from a bank or if I did not finish applying all checks I got that day. A missing check copy was rare. She had never asked me to do anything in the plan until she gave me the plan. According to our department head and a VP of Human Resources, she said she had. If so, she was lying. She did not make the claim in the plan. If it were true, why not? Since she decided to lie, why not claim that, if she thought of it? I was fine with informing her about missing check copies and how far along I was in applying cash. It was probably not necessary. She claimed she might have to make an action plan. She never did or had to. She later changed her story and said she wanted to know what was going on and couldn't afford to

look bad about not knowing. She was okay with lying. I had only a half day of checks not entered by the end of any day, and that included after holidays. I contacted the bank about needed copies; they got them to me within a day. My previous supervisor or a co-worker had told me the procedure. At the time of the first write-up, a check copy was missing maybe once every couple of or few months. The second item I did was I once used a generic fax from a software program I used occasionally. I faxed companies to ask if we could move overpayments to unpaid invoices. The generic fax listed all unapplied amounts and open invoices, so I had to edit. I had been using a fax sheet with the company logo; I thought it looked more professional and was easier to read. I typed in about one or two lines to ask about transferring an amount. It took me longer to use the generic fax. The third item I did was I printed a report from the software program I used occasionally. I set it on my desk and did not use it. I also printed a report from the main software program I used. It had more information. I used it. So, I was told I had improved from unacceptable to acceptable performance after I started letting my supervisor know about the rare instances of a missing check copy that I always took care of and got within a day or when I had not entered all checks, used a generic fax sheet once, and started printing a report that I did not need or use. Paper, toner, and time were wasted. Different amounts of checks came in

each day, so daily workloads for that were different.

I wrote "duress" to describe my condition at the time I signed the settlement. I wish I had said stress. The district court said duress meant a threat. I should have said my emotional state prevented me from making sound decisions. Sony caused my emotional state. I was very stressed and overwhelmed by things. Stress diminishes judgment. Sony made threats or implicit threats. They lied and showed they probably would at any trial. I was pressured by others to take the settlement. Like Sony, none looked at all the evidence or talked with my witnesses. A mediator at the EEOC-sponsored mediation badgered me and said the deal was great. I was pressured by him, the EEOC and others, directly or indirectly, to take the settlement. Sony committed fraud by lying to my union, the EEOC, the mediator, the California Labor Relations Board, and the courts. They tricked people into believing I was a poor performer, even though they had zero documented proof or evidence. The Labor Relations Board was looking into the jury duty issue. They said if other issues were a factor in my termination, then the jury duty issue might not matter. There was a threat of harm. The EEOC told me I would have to pay $25,000.00 just to go to court and that Sony could probably get the court to say I must pay Sony. I did not know how much that might be. I was sure it would be thousands and take all my money. Sony tried to get attorney fees. That was fraud

because they did not deserve them, win or lose. The only way they would have won was to lie or not tell the whole truth. I knew I would have to pay court costs like jury fees and stenographer fees if I lost. I heard that was typically $5,000.00-7,000.00. I was afraid of losing my money and property and dying on the streets. Sony had tricked a workers' compensation doctor into thinking I was a poor performer. I was sure they would use that doctor as well as the others I mentioned as witnesses. Doctors are supposed to be highly intelligent and believable. All that was too much stress and psychological damage. Sony conspired with others. They were in contract negotiations with my union after my termination. They got the union to not help me. Sony gave the union jury pay for members. The last issue at Sony was they claimed I spent too long on jury duty. They claimed I had to get their permission because I used vacation time. That looked like conspiracy and a bribe to get the union to not help me. The EEOC said they had spoken with my union, and the union indicated they did not think I had a case or did not plan to help me. So, I thought that Sony, by fraudulent means and criminal behavior, had the EEOC, a physician/psychiatrist, some Sony employees, and my union ready to testify against me.

Sony illegally broke a contract, the CBA, which I had not violated. They fraudulently put me in the position of having to take the settlement offer or try to act as my own

attorney or do nothing and face the consequences of having been fired. If I could get a job interview, I would probably be asked to explain why I was fired. Sony lied to my union representative, who, with no documentation, claimed Sony was right. They would not help me. I tried and could not get a lawyer. The LA Bar only had one attorney listed who could help someone in a union. The district court's pro se packet stated I could ask for help in obtaining a lawyer; I asked.

I read Section 2000e and cannot tell that I must file with the EEOC and get a right to sue letter before filing a court case. I do not see how a person can be expected to know that. Until the court said I needed a letter, I thought going to the EEOC was an option. Filing a case should stop the statute of limitations for filing with the EEOC. One could then go to the EEOC.

Sony requested sanctions on me in district court. The judge denied that, even though Sony tricked him into believing I was trying to re-litigate some claims. The judge dismissed claims against a person, who was not a defendant. I did not write about state contract law in my complaint, but I talked about it in oral argument. The court dismissed claims with prejudice that happened before the settlement, claims erroneously thought to be duplicative, Title VII claims against individuals, and federal claims against Mellon. Law shows the settlement could be challenged. I believe law prohibits discrimination by banks in ways besides in

employment or lending. Sony's policies state that harassment by a company doing work for Sony is illegal. Mellon did work for Sony. I have read it has been suggested or was required that a person should tell a harasser to stop before making a legal complaint. My letter was an attempt to do that. I was under lots of stress at Sony when I wrote the letter. I wanted to speak up for myself.

Sony and their attorneys conspired to lie, defame me, harass me, and take away my constitutional and other legal rights. They do not have immunity for court papers because of Kimes. Conspiracy can be shown in places besides court papers. Sony and their attorneys had plenty of evidence and witnesses to show I was not a poor performer. Sony's lawyer sent me information that proved I was not a poor performer and proved my supervisor lied and harassed me; others at Sony lied and harassed me. They acted illegally, criminally, and in bad faith. My supervisor and Sony claimed jury duty was a problem until attorney Amy Dow stated it was not in a document to the Labor Relations Board. The documented story change sounds like conspiracy somewhere.

The appeals court stated that their disposition of my case was not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3. Were they unsure about something? They upheld dismissal of non-duplicative claims supposedly involving a person not a defendant. Does anybody see why I do not think I am getting due process or a fair and full attempt at litigation? They made

the point I had not raised the issue of Mellon being a possible indirect employer until appeal. I had not been saying that. The district court thought maybe I was, so I addressed the idea.

Should a jury decide if fraud, undue influence, unfair advantage of emotional or mental state and other violations occurred? Judges are supposed to decide procedural issues. Juries are supposed to decide Civil Code and fact issues. There were many triable issues about fact.

In August 2000, after I came back from a vacation, my supervisor, Russo, stated I was a "miracle worker," had "magic fingers," she was never so glad to see someone back from vacation as me, said my fill-in, who had trained me, said she did not know how I did it. There were witnesses. My fill-in left me a note saying she could not fill my shoes. Another employee said what I did was like pulling "a rabbit from a hat." Russo wrote that I made few mistakes, handled a large workload, worked well with others, and volunteered for new assignments. Yet, somehow, I was fired for "poor performance over the long term." It is the court's decision if and how long I have to serve on jury duty. She must have had personal reasons to want rid of me. I had an MBA. She said she could not afford to look bad. Maybe, she thought my good work and degree might do that. She referred me to a person and position in a different department at Sony. Why, if she thought I was a poor performer?

After my termination, at an EEOC-sponsored mediation in February 2002, I said no to a settlement offer after agreeing at first. I had a week to consider it. I had signed out of fear. I had no help from my union or an attorney. I knew the settlement was not remotely fair. I later agreed to sign it if the offer were still open. I went to sign in August 2002. Sony made changes to the old one, which was what I was agreeing to sign. The old one I agreed to sign was not offered. That was fraud. I should have been given 21 days to think over the new settlement.

I had to act as my own attorney or forget court. I had anxiety disorder, severe depression, and post traumatic stress disorder (PTSD) when I signed the settlement. I had panic attacks and trouble sleeping. I could hardly function. Sony lied over and over and committed perjury, so there was the implied threat to do it again. No one should have to sign or decline a settlement under those circumstances. I would not have signed the settlement if Sony had not lied.

Russo tried to take advantage of my being the quiet type. Sony let her. My being the quiet type came from PTSD, anxiety disorder, and depression. They have continually tried to take advantage of my mental weakness and distress. It is humiliating to have to say I had that. I was not capable of signing a contract because of my emotional state. Section 1550 supports me. I was not capable of signing a contract because I was deprived of my civil rights. There was menace and mistake. Some

people at Sony and elsewhere might have mistakenly believed Russo. It is hard to believe anyone, who knew her, did; she was well-known as a liar. Sony got an unfair advantage over me by lying and fraud. The consideration in the settlement did not reasonably or fairly induce me to sign it. It was very inadequate. I signed only out of fear. Sony took grossly oppressive and unfair advantage over my necessities and distress. I was afraid of becoming homeless and dying on the street. No one should have to sign a contract under that fear. PTSD can make someone have exaggerated fear. I was ready to do about anything legal to get rid of my fear and anxiety. Courts have ruled settlements signed by someone in physical pain can be challenged. Mental stress is bad and has a physical element.

Sometimes judges approve or reject a settlement. If asked, I would have said I was signing out of fears and not because I liked the offer.

State law allows individuals to be named in lawsuits about discrimination. I thought federal law allowed that if there are non-duty acts, like harassing, defaming, and lying.

I want to clear my name as allowed in Board of Regents v. Roth (1971). The government was involved, including the EEOC, the State Labor Relations Board, and the courts.

Sony fired me when I was approximately 4½ months from getting a pension. They knew

I wanted it. I was able to get it in the settlement; Sony did well there.

In state court, Sony tried to claim our two settled cases were final and adverse determinations to me. They agreed with me that the settlement was adverse to me. There were not really determinations.

I worked at Sony for one year and eight months before anyone claimed I was not performing well. For four months, Russo did not tell me the first write-up, the plan, was punishment. She may never have, but her supervisor indicated the plan was punishment. Russo never discussed anything in the plan or follow-ups when she gave them to me. She just handed them to me.

Sony claimed and the district and appeals courts ruled that my 2003 case was part of the 2004 case, i.e., they claimed 1998 thru 8/7/2002+2004=12/1/2002 thru 12/1/2003. They claimed free speech means employment discrimination, workers' comp denial, settlement challenge, and denial of recommendation. They claimed Calley+Burke+Smith=Calley+Burke, i.e. 3=2. Sony tried to say the 2003 case was re-litigation of a 2002 case. Judge Collins saw through that and said no. Judge Pregerson was tricked.

There was not a lawful object that Section 1550 requires. Sony wrongly fired me. Sony did not have my consent about the settlement; that would require me to want to and agree to void the CBA. 1568 states that consent is deemed to have been obtained in one of the

causes mentioned in 1567 only when it would not have been given had such a cause not existed. The causes in 1567 are duress, menace, fraud, undue influence, or mistake. All of those were done. I would have never given my consent if none of those had happened. Four obviously happened. Duress may not be obvious. Under 1689, I can rescind the contract. Also, because my union was a third party affected, I can rescind it. I made a mistake by signing the settlement. I did not want it. 1689 supports me. Consideration in the contract failed even if I had actually wanted the settlement because Sony changed the time for getting outplacement help. The consideration failed in a material respect. Public interest will be prejudiced by letting Sony get away with wrongfully harassing, defaming, punishing, and terminating me, violating the CBA, and forcing me to sign a new contract or face possibly or probably losing much. The public should know a big corporation cannot get away with breaking the law and retaliating when someone speaks out about it. People should not have to worry about being illegally fired.

About my letter, Sony should learn that if they stress someone, that person might fight back in ways they had not thought of. Sony had me speak with a consultant, who was a psychiatrist, to supposedly help me become a better employee. He asked me if I owned a gun. Sony did something sensible. It was utterly irresponsible that they let my supervisor harass me over and over. I have

evidence a couple of employees thought I might be the quiet type, who became violent. Sony was not concerned with the safety of employees. Sony was beyond negligent and intentionally created a hostile environment for me and a scary environment for others.

Section 1667 says it is not lawful if something is contrary to good morals. The settlement was not good morals. It was obtained by harassing, punishing, and defaming, and wrongfully terminating me. Sony finally admitted and documented Russo was a bad manager, who needed to be punished and stopped. It is not good morals for Sony to not make what happened as right as possible. The settlement says I can say I left Sony voluntarily. It is good in one way but requires me to lie. Section 1668 states all contracts, which have for their object, directly or indirectly, to exempt one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of the law, whether willful or negligent, are against the policy of the law. Sony clearly violated that. I was harassed and defamed over and over. So, the settlement is illegal. 1670.5 states that a court can refuse to enforce the contract if the court finds it or part of it unconscionable. Wrongly punishing, stressing, and terminating me, and putting me in a position to consider signing were unconscionable. Putting themselves in a position to offer it was, too. 1565 requires that consent must be free and mutual. Mine was not. Instead, there was duress, menace, fraud,

undue influence, and mistake. Both sides must state in the second contract, the settlement, they mutually agree to void the first, the CBA. That did not happen. There was connivance on the part of Sony; 1689 prohibits that. They connived to harass me, fire me, break the CBA, get others to believe I was a poor performer, and get me to sign an unfair settlement.

Sony did not tell me about the changes they made to the settlement, so, I did not give informed consent, when I agreed to sign. The amount of the settlement was shockingly low: five months salary for an almost totally ruined career. I did not get anywhere near adequate compensation for lost wages. I got $3,000.00 for psychological help; that was shockingly low. They admitted I was psychologically damaged. I did not get any compensation for loss of enjoyment of life, damage to reputation, humiliation, and ridicule. I got the pension. I started at Sony in June 1998 as a temp. I did not use any sick time until January 2001. That is not someone, who wants to violate policies or procedures. I took the sick time off for stress. Sony lost productivity.

Sony did not fire me for the 2000 letter. Clearly, they retaliated in 2001 for my going to the EEOC.

Section 1570 bars threat to character. Sony had harmed my character and showed they would continue. 1575 bars "taking an unfair advantage of another's weakness of mind" and "taking a grossly oppressive and unfair advantage of another's necessities or distress."

Sony clearly violated that. I had severe anxiety disorder, depression, and PTSD. I was clearly distressed. A person without those conditions would probably be distressed. Physicians documented my conditions. Sony had that documentation or access to it. I was afraid of not being able to have food, clothing, and shelter. I was afraid of becoming homeless and dying on the street. I was at a reduced mental condition because of Sony's illegal actions. I was forced and coerced into signing the settlement. My union would not help me. I could not get an outside the union attorney because, under the law, the union was my only legal representation. I did not have competent or any counsel. I had three options: sign the settlement, do nothing, or act as my own attorney. Doing nothing would have left me with a probably ruined career and much financial difficulty. The settlement was a little better than that. I was advised by the EEOC, which Sony lied to, that if I acted as my own attorney I probably could not possibly win and would probably have to pay a lot of money to Sony and the court. I cannot find a job now. I am afraid to leave my house; I am afraid someone will try to hurt me or something will go wrong. I have agoraphobia. My negative emotions overwhelm me. Sony threatened to injure my character even if they did not directly say that. They lied about me over and over; that indicated they would continue. They lied under apparent penalty of perjury to the State Labor Relations Board.

If I could say I voluntarily left Sony, it might not be much better or might actually be worse than saying I was fired. I would likely be asked why I left Sony. It is obviously bad to say I was fired. If I said I voluntarily left or just by looking at my resume, employers would probably wonder why I could not get promoted in over three years. If I said I was fired, I could say I learned from it or try to explain I was wrongly fired. No choice is good.

In Pardi v. Kaiser (9th Cir. 2004), a settlement prevented changing it. Sony changed the CBA to mean they could punish and terminate me without cause. Sony illegally rescinded the CBA. I want to legally rescind the settlement. If I cannot, then there is no equal treatment or protection or equity, and Sony gets away with having dirty hands. In Morta v. Korea Insurance (8th Cir. 1988), a jury decided if a release was valid. I would like for a jury to decide if the law and the facts support being able to void the settlement. Section 1550 states there must be a lawful object. There was not. Sony fired, punished, defamed, harassed, and fired me, discriminated against me, and broke and voided the CBA. They conspired with my union to get my union to let them get away with it. A little after my termination, Sony agreed to give Sony union members paid time for jury duty. I had no paid time for jury duty. I was punished for going too long on jury duty. I was told Sony would not have allowed it, if I had asked Sony instead of following a judge's order.

Section 1568 says that consent is deemed obtained through duress, menace, fraud, undue influence or mistake, when consent would not been given had such cause not existed. I would not have given my consent if those things had not existed. Sony unlawfully detained my property by wrongly denying my paychecks. That is duress. Sony injured me without physical contact. They injured me mentally. They threatened to injure my character. They had injured and threatened to continue. They lied to the court and to government agencies, including under penalty of perjury. They committed fraud and threatened to continue. They proved my complaining to the EEOC and Labor Relations Board would not stop them. Things were pretty calm for me after Sony found out about my EEOC complaint that I filed in late March 2001. After I turned down a settlement offer in June 2001, they started back with false accusations. Courts have ruled that when adverse employment decisions closely follow complaints of discrimination, retaliatory intent may be inferred. That is in Bell v. Clackamus County, 341 F.3d 858, 865-66 (9th Cir. 2003) and Pardi. This also happened right before I mailed the letter to the bank in 2000. I had complained about discrimination, and my manager and others started defaming and harassing me. My supervisor's tone changed; she began claiming I was purposely not doing right. In the first write-up, she had tried to make me look incompetent and afraid to talk. Injury and threat of injury to character are

menace as in Section 1570. Threats can be implicitly.

In Pardi, intentional interference with prospective economic advantage was an issue. Sony did that. Sony interfered with my union and others. My union would not help me keep my job and not be punished. The EEOC stopped helping. My union interfered with me and Sony; the union should have made the relationship better and made Sony abide by laws. Mellon interfered with my relationship with Sony. So, there was an economic relationship between me and a third party, the defendants knew about it, there were intentional acts and inactions designed to disrupt the relationship, actual disruption of the relationship, and economic harm caused by the acts of the defendants. That is in Korea Supply Co. v. Lockheed Martin Corp., 63 P.3d 937, 950 (Cal. 2003).

Section 1572 discusses actual fraud. Sony suppressed the truth. They committed acts to deceive. They misled and lied. They knew I was not a poor performer and knew I was a very good or excellent performer. Russo and others, with Sony's approval, tried to make me look bad. Analysis of the first write-up I was given actually indicated my performance was absolutely perfect. I do not claim that, but they did, however unintentionally. They showed I made zero mistakes, kept up with my workload, followed policies and procedures, and worked well with others. In the second write-up, they discussed the letter. They claimed I made 4 mistakes. In the two

write-ups and about four follow ups to the first write up, they claimed I made six cash application mistakes and one mistake in an adjustment. I was never shown documentation about the adjustment. One claimed cash application mistake was definitely a mistake, and one definitely was not. I am not sure about the letter, the only possibly legitimate complaint. Does anybody think they could perform that well and make that few mistakes in 2¼ years, especially when you have to start going to work every day wondering what your supervisor might do and knowing your employer would do nothing or encourage her? If Sony's lawyers actually believed Sony, they made a mistake. Since, they either did not do their research or just lied, they violated their duty and Rule 11. I thought Sony's lawyers would say that my supervisor claimed I was a poor performer, but they just stated it like fact. They committed fraud and conspired.

Acceptance is discussed in Section 1585. My acceptance of the settlement was not absolute and was qualified. I did not want a settlement, both the one I thought I was going to sign and the signed one.

My union filed a grievance, which is still in effect. I signed a statement, that Sony said I had to, that asked the union to withdraw the grievance. Sony's lawyer said she would mail it to the union. The union said they never got it.

I was pressured by others to take the settlement. Sony showed they would lie in spite of the EEOC's involvement. They

disrespected the EEOC by lying and harassing me after my complaints to the EEOC. At the time I decided to sign the settlement, I had recently gotten a negative and defaming workers' comp physician's report, a defaming letter that the EEOC was dropping my case, unresponsiveness from my union about non-EEOC related issues, and hesitant and unsure responses from the Labor Relations Board. My union had said they would not help me with EEOC related issues. The mediator had harassed me and badgered me to get me to take the settlement. It made him look good to negotiate a settlement. I wanted to discuss issues at the two mediations. We mostly negotiated for me to leave. My supervisor was at one and never said a word about any issue. When I signed the settlement, I was having panic attacks and trouble sleeping. I had fear and anxiety and depression all the time. I was overwhelmed. It was due to Sony's wrongful and criminal actions. What kind of doctor would just assume the employee was a liar and irresponsible and the supervisor was right without knowing the facts? That has to be meanness and dislike or hatred toward me for some reason. She refused to look at my evidence and was disrespectful. She must have wanted me to be wrong and harmed. She is supposed to be intelligent and "do no harm."

I did nothing wrong in filing this case. I would like for Judge Pregerson's threat of possible future sanctions to be voided. I clearly stated and showed in the 2003 case that it was for events between 12/1/02 and

12/1/03 and related to two emails. My 2004 case included nothing from 12/1/02-12/1/03. The 2004 case included challenging the settlement signed on 8/7/02. My workers' comp claim was denied in a letter dated 8/7/02. I received that letter after the settlement and before my email trouble started in December 2002. The problem with the reference happened in 2004. Raymond Smith was a defendant in the 2003 case but not the 2004 case. He was involved in harassment and defamation about the emails. He was not involved before the settlement, about workers' comp, or about a reference. I just cannot get the district and appeals courts to see obvious facts.

I did not get an analysis or discussion of my claims by the appeals court that others have gotten. The district and appeals courts did not discuss my claims that state contract laws applied. That is not due process or equal treatment or protection. I did not get a fair and full attempt at litigation.

Sony's lawyers harassed me, defamed me, discriminated against me, violated my constitutional and civil rights and aided and conspired with Sony to do so. That happened in court papers and elsewhere.

Hopefully, this court will clear contract law in general and contract law involving a union CBA. I did not give informed consent because I did not have a lawyer to tell me about contract law or if I might have to pay Sony and the court a lot of money. An EEOC employee told me about probably having to

pay Sony and the courts a lot, but he was not an attorney. I think he meant well. If the EEOC were wrong, then they made a mistake that I believed. The union never told me they were my only legal representation. They never told me they would not help me about non-EEOC issues. The case I signed the settlement for was only about EEOC-related issues. It was only about discrimination in being denied promotions. So, I was indirectly told my union would not help me with that case. Sony knew my union was not helping me with the case; they took unfair advantage of my not having any legal representation. Sony influenced the union to not help me. Sony's lawyers knew or should have known the union was my only legal representation and was not helping me.

Hopefully, this court will state if I had the right to complain to the bank. I wrote the letter 11 moths before my termination. Union issues in court have a six months statute of limitations. Should punishment or termination for an issue over six months old be allowed under law? No other issue had any merit whatsoever for termination or punishment other than maybe saying be careful a couple of times. Being unsure about the letter was a big reason I signed the settlement.

If Sony's lawyers believed Sony, then they made a mistake. Sherwood v. Walker (1887) is about mistakes. Noble v. Williams was about someone being forced into a contract not intended. I was, too. I had to take the settlement, act as my own attorney and

according to the EEOC, likely lose all, or do nothing. I wanted none of those. I wanted the CBA back in effect, my job back, and a promotion. I have never filed a case without merit. I have heard no one should act in pro se. Now, I realize it should include meaning a pro se can have a terrible time getting a court to see the obvious, listen, or analyze points, or get a judge to not assume a lawyer knows the law or, unbelievably, to not assume a lawyer tells the truth. Hopefully, this court will do something to make sure pro se's get a fair attempt at litigation. I never, ever knew this problem could happen in America now.

The settlement was continued retaliation and discrimination as well as harassment and fraud.

I was of unsound mind. Section 1575 says such a person is not capable of entering a contract. I had PTSD, severe anxiety disorder, and severe depression. Those are disabilities. A person with a mental disability, especially a severe one, is not of sound mind. In Pardi, the court stated that depression was a disability.

1668 states all contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of the law, whether willful or negligent, are against the policy of the law. Sony tried to get away with and avoid responsibility for their willful harassment and defamation, i.e. injuries to me, and for their fraud, lying and being misleading to others, while I was at Sony and

afterward. Their actions injured me psychologically, emotionally, mentally, economically, in terms of harm to reputation and ridicule, and also physically. It is unconscionable they tried to get me to sign a contract to get away with the unconscionable intent and actions to harm me for no reason and to want my manager and others to get away with harming me. There may have been constructive fraud, discussed in 1573, if Sony's lawyers believed Sony's claim that I was a poor performer. The lawyers would have had to breach their duty to believe they were telling the truth and not suborning perjury.

Sony is committing fraud by trying to uphold the settlement when they punished Russo for her bad behavior after I was terminated. My union, and the workers' comp insurance carrier and two workers' comp physicians committed fraud.

Section 1585 says acceptance must be absolute and unqualified. I did not want it. I wanted other things, like the CBA in effect, my job back, and a promotion or new job, adequate compensation, and punishment for wrongdoers.

Lawyers would probably hate to lose to a pro se. If would probably be embarrassing or humiliating, like an employer saying someone with an MBA was too incompetent to be a clerk. Judges may not like pro se's showing judges' mistakes or saying a fellow lawyer was wrong or lied.

The court should not let this case be a precedent. It is not public interest. Corrupt

lawyers, like Lake, Zapp, and Coddon will try to use it. They and others have. The public needs to and is supposed to have confidence in the courts. Courts have said that. I have heard that said about judicial immunity: judges need to feel free from lawsuits and feel unpressured to adjudicate a case properly and fairly. I have pointed to many laws and many cases that support me. Most of the time, my points are ignored in the courts' analyses. I do not see how that can be fair and due process. All litigants should feel they will get a fair chance at justice and due process and that written and case laws will be followed.

There was actual fraud, discussed in Section 1572, because Sony suggested, as a fact, things not true and that they knew were not true. They tried that over and over. If the lawyers believed a person with a 99.98% accuracy rate and who never had a problem with getting behind with his workload and who worked well with others was a poor performer, that assertion was not warranted by the information the lawyers had. They suppressed knowledge of that which is not true. They suppressed that jury duty was a problem, lied and said it was not, even though they had in their possession written notes that my supervisor said my jury duty service was too long, not approved, and she would not have approved it. Sony's lawyers sent me a copy of that in a bundle of information. Sony promised to abide by the CBA and promised not to fire me if I did not write another letter. They promised to abide by laws prohibiting

discrimination and harassment. They did not keep their promises. They deceived many people.

Section 1573 is about constructive fraud. There is constructive fault if anyone's breach of duty actions were not intended as fraud and if they gained an advantage. It is unbelievable if anyone at Sony or Sony's lawyers did not understand I was treated wrongly, but if so, then they gained an advantage by not doing their duty, like under FRCP 11, to make sure or reasonably sure they and the person they were quoting were telling the truth.

1583 states that consent is deemed fully communicated as soon as the party accepting has put his acceptance in the course of transmission to the proposer. Under extreme stress, I communicated that I would accept the proposal from February 2002, but changes had been made when I signed in August 2002. My acceptance was not absolute or unqualified. I did not have time to consider the new settlement offer, so Sony violated Section 1587. 1587 states that a proposal is revoked by failure of the acceptor to fulfill a condition precedent to acceptance. Acting legally is also a condition precedent to acceptance. Sony violated that over and over.

Wal-Mart v. Coughlin was filed against a former executive to void his retirement package. After his retirement, the executive admitted he had defrauded the company. After my termination, Sony admitted Russo was a problem. I want to void the settlement

because Sony committed fraud and other wrongs and crimes.

Whistleblowing was an issue. I mentioned to two managers that Sony apparently had money that customers' overpaid. One manager seemed to want to check it. The other manager was Russo, who had no problem doing wrong.

The Constitution states the United States Supreme Court is supposed to hear appeals, except Congress can make exceptions. Congress made all cases exceptions. There are no exceptions if all cases are called exceptions.

In O'Brien v. Sky Chefs (9th Cir. 1982), the defendant relied on subjective matter for performance reviews. Sony did that and offered no objective proof that I was a poor performer. They only offered the word of a well-known liar, who was later punished. Everything in her first write up was a lie or misleading. She showed no proof, evidence, data or logical argument to support her. In O'Brien, the court ruled refusing to rehire and giving bad recommendations after termination and after EEOC charges were filed, are sufficient to assert retaliation claims.

Veprinsky v. Fluor Daniel addresses post-employment retaliation, blacklisting, and not finding employment. I cannot find employment. I could not get a job at any movie studio or where my union was involved. I am experiencing retaliation by Sony every time I apply for a job.

In Morta, the plaintiff disavowed a release on the ground that its contents were

fraudulently misrepresented. The two sides stipulated to a trial on the validity of the release. A jury said the release was invalid. The plaintiff said there was fraud, undue influence, mistake or deceit. I made those arguments. I want a jury to decide if the settlement was invalid for any reason. I was in dire straits when I signed the settlement. I am reinjured every time I apply for a job. The money offered, 5 months salary, was shockingly low for the damage done to my earning capacity. The $3,000.00 for counseling was shockingly low for all the psychological damage done. I still need help. I am so psychologically damaged that I am afraid to leave my house. The cited case discussed there not being a mistake particularly where he is given an opportunity to have it read and explained to him by some competent and reliable person, such as an attorney. I did not have someone to explain things. My case did not get the analysis of that case. I did not get equal treatment and due process. In the Morta case, the court said if claims regarding secret intentions or reservations raise issues of fact, that must be put before a jury. I want that. Twice, I rejected settlements from Sony. I finally gave in. They kept on lying about me to anyone. We would have never gotten to the point of signing a settlement if Sony had not lied about me, starting 2½ years before we signed the settlement. Sony should not be rewarded for that or get away with other wrongs.

Sony and their lawyers took undue advantage of my lack of knowledge of the law compared to Sony's and their lawyers. Sony also had in-house counsel. The EEOC influenced me because they were experts.

The district and appeals courts discussed Title VII but not the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA). All were factors. I was discriminated against on the basis of sex, disability, medical condition, age and probably others. My supervisor treated most or all employees badly. She was worse about two other male employees and especially me.

Asking and getting me to sign the settlement and putting me into a situation to even consider it violated Title VII, ADA, ADEA, FEHA, state contract laws, and other laws.

I was told I did not exhaust my administrative remedies. At first, I thought that meant I did not try to work things out with Sony. Later, I realized it meant I had to file a complaint with the EEOC first.

I did not get a full and fair opportunity to litigate this case.

Basis of Jurisdiction of First Court

The United States District Court had jurisdiction because of federal questions and diversity of citizenship.

Argument for Review on a Writ of Certiorari

I did not get Fifth and Fourteenth Amendment right to due process. State law allows for challenge of a settlement obtained under the conditions discussed. Consistency in contract laws and cases is needed.

Attorneys of Record

Glenn Henderson, Plaintiff pro se
5952 Cliffdale Rd.
Fayetteville, NC 28314
910-867-4931

Holly Lake
Paul, Hastings, Janofsky & Walker, LLP
For Sony Pictures Entertainment, Paul Hastings, Janofsky & Walker LLP, and employees
515 S. Flower St., 25th Floor
Los Angeles, CA 90071
213-683-6000

Hardy Murphy
For Mellon Bank
Reed Smith, LLP
355 S. Grand Ave., Suite 2900
Los Angeles, CA 90071

Appendix

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
JAN 16 2009
MOLLY C. DWYER,
CLERK
U.S. COURT OF APPEALS

GLENN HENDERSON, Plaintiff-Appellant, v. SONY PICTURES ENTERTAINMENT, INC. et al. Defendants-Appellees

No. 05-56081
DC No. CV-04-08748-DDP
California (Los Angeles)

ORDER

Before: B FLETCHER, THOMAS, and WARDLAW, Circuit Judges

The panel has voted to deny the petition for rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

NOT FOR PUBLICATION
UNITED STATES COURT OF APEEALS
FOR THE NINTH CIRCUIT

FILED
AUG 01 2008
MOLLY C. DWYER,
CLERK
U.S. COURT OF APPEALS

GLENN HENDERSON, Plaintiff-Appellant, v. SONY PICTURES ENTERTAINMENT, INC. et al. Defendants-Appellees

No. 05-56081
DC No. CV-04-08748-DDP
California (Los Angeles)

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Submitted July 22, 2008**

Before: B FLETCHER, THOMAS, and WARDLAW, Circuit Judges

Glenn Henderson appeals pro se from the district court's order dismissing his action

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

alleging Title VII and state law causes of action arising from termination of his employment with defendant Sony Pictures Entertainment ("SPE") in 2001. We have jurisdiction under 28 U.S.C. Section 1291. We review de novo the district court's dismissal for failure to state a claim. *Two Rivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999). We review for an abuse of discretion the distinct court's dismissal of duplicative claims, *Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007), and the district court's decision not to exercise supplemental jurisdiction over state law claims, *Brown v. Lucky Stores, Inc.*, 246 F.3d 1182, 1187 (9th Cir. 2001). We affirm.

The district court properly dismissed with prejudice Henderson's Title VII that arose during his employment with SPE because those claims are barred by the terms of a settlement signed by Henderson and SPE in 2002 to resolve a prior action. *See Pardi v. Kaiser Found Hosps.,* 389 F.3d 840, 848 (9th Cir. 2004). Henderson failed to establish that the settlement agreement was [procured by fraud, duress, or any other reason that would render it invalid. *See Morta v. Korea Ins. Corp.,* 840F2d. 1452, 1466-57 (9th Cir. 1988) (upholding settlement agreement where record showed no legally sufficient reason to rescind it).

The district court did not abuse its discretion when it dismissed with prejudice Henderson's Title VII claims that arose after

the settlement agreement was signed because Henderson litigated those claims in an action filed in 2003 ("2003 Action"). Henderson's appeal of the 2003 Action was pending in the Ninth Circuit when the district court dismissed this case. See Adams, 487 F.3d at 688 (stating that the district court did not abuse its discretion by dismissing a duplicative action).

The court properly dismissed without prejudice Henderson's Title VII claims that are based on allegations unrelated to the 2003 Action because he had not exhausted his administrative remedies. *See Stache v. Int'l Union of Bricklayers & Allied Craftsmen, AFL-CIO*, 852 F.2d 1231, 1233 (9th Cir. 1988).

The district court properly dismissed with prejudice Henderson's Title VII claims against Mellon Bank because he failed to allege that he was a direct or indirect employee of Mellon Bank. *See* 42 U.S.C Section 2000-e2. Henderson's argument that Mellon Bank was an indirect employer, which he raises for the first time on appeal, is waived. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

The district court did not abuse its discretion by dismissing Henderson's state claims without prejudice. *See Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 806 (9th Cir. 2001) (stating that when a district court dismisses on the merits a federal claim over which it had original jurisdiction, it may decline to exercise supplemental jurisdiction over the remaining state claims).

Henderson's remaining contentions are unpersuasive.

AFFIRMED

Filed
Clerk U.S. District Court
Jun 20 2005
Central District of California
By Deputy

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GLENN HENDERSON, Plaintiff,

v.

SONY PICTURES ENTERTAINMENT; et al. Defendants.

Case No. CV 04-08748 DDP (SSx)

ORDER GRANTING MOTIONS TO DISMISS

[Motions filed on 4/19/05 and 4/22/05]

Entered
Clerk U.S. District Court
Jul 21 2005
Central District of California
By Deputy

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

This matter is before the Court on the defendants' motions to dismiss the plaintiff's complaint. After reading the papers submitted by the parties, and hearing oral argument, the Court grants the defendants' motions.

I. Background

Sony Pictures Entertainment ("Sony") hired pro se plaintiff Glenn Henderson in August 1998 as a cash allocation clerk. Approximately, three years later he was fired. In June 2002, he filed his first complaint against Sony in state court, alleging age discrimination and retaliation. The parties subsequently reached a settlement agreement ("Settlement Agreement") and on August 22, 2002, Henderson moved to dismiss his complaint. On August 26, 2002, the state granted Henderson's request and dismissed the action with prejudice.

On December 1, 2003, Henderson filed a second complaint ("2003 Complaint") in state court. In addition to Sony, the complaint named Sony employees John Calley, Raymond Smith, and Mary Burke as defendants. On February 27, 2004, the defendants removed the case to federal court. The plaintiff's 2003 Complaint alleged that the defendants were liable for civil rights and First Amendment violations, "conspiracy to take away rights," discrimination, retaliation, whistle blower retaliation, harassment, fraud, defamation, insult, Freedom of Information Act ("FOIA") violations, threats, possible blackmail or extortion, breach of contract and "cover up of wrongs." (4/12/04 Order Granting Defendants' Motion to Dismiss in cases CV 04-1346 and CV 03-8782 at 2.) These claims related to the defendants' alleged activities since the settlement Agreement. (Id. at 6.)

The Honorable Judge Audrey Collins construed the plaintiff's 2003 Complaint to

assert three causes of action under federal law: (1) civil rights and the First Amendment, (2) FOIA and (3) Title VII, for employment discrimination and retaliation. The court dismissed all three federal causes of action with prejudice. The civil rights and First Amendment claims were dismissed because the defendants were private individuals, not state actors. The FOIA claim was dismissed because only agencies are proper parties to FOIA actions. The Title VII discrimination and retaliation claims (as well as claims under California Fair Employment and Housing Act ("FEHA") were dismissed because the plaintiff's allegations related to events occurring after his termination as a Sony employee: the plaintiff had failed to allege an adverse employment action. Judge Collins dismissed the pendant state law claims without prejudice.

The plaintiff's appeal of the dismissal of this 2003 Complaint is currently pending before the Ninth Circuit.

The plaintiff filed the instant complaint in federal court on October 19, 2004. The named defendants include Sony; Mary Burke and Kim Russo, employees of Sony, Paul, Hastings, Janofsky & Walker LLP ("Paul Hastings"), which represented the defendants named in the 2003 Complaint; Paul Hastings employees Amy Dow, Holly Lake, and James Zapp; Mellon Bank ("Mellon"); and a Mellon Bank employee named "Connie." More than a dozen other defendants are named in the caption of the complaint; presumably, these

are employees of Sony, Paul Hastings and Mellon.

The plaintiff alleges that he was not paid workers' compensation benefits by Sony's insurance carrier ESIS because of Sony's interference. (Compl. at 3.) He contends that he suffered discrimination, harassment, retaliation, and whistle blower retaliation while he was employed by Sony. (Id. at 3-5.) He also asserts that Sony, and its employees, have prevented him from obtaining a new job by refusing to provide him with a positive recommendation. He alleges that the defendants' unlawful conduct included breach of contract, conspiracy, fraud and defamation. (Id. at 6-8.) Further, the plaintiff seeks to have the 2002 Settlement Agreement set aside, on grounds that he entered that agreement under duress.

When the plaintiff was still employed at Sony, he allegedly wrote a letter, in his capacity as a Sony employee, to Mellon's Chief Executive Officer, complaining that an employee of Mellon, named "Connie", had mistreated him. He now contends that in retaliation, Mellon made false statements to Sony about him. He alleges that Mellon's alleged conduct led to his termination and constituted fraud, defamation, discrimination and harassment.

The plaintiff has not attached a right to sue letter from the Equal Opportunity Employment Commission ("EEOC") or the California Department of Fair Employment and Housing ("DPEH").

Sony and its employees (the "Sony group"), Paul Hastings and its employees (the "Paul Hastings group"), and Mellon have brought motions to dismiss pursuant to Federal Rule of Civil Procedure 12 (b) (6).

II. Legal Standard

Dismissal under 12 (b) (6) is appropriate when it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations set forth in the complaint. Newman v. Universal Pictures, 813 F.2d 1519, 1521-22 (9th Cir. 1987). The court must view all allegations in the complaint in the light most favorable to the non-movant and must accept all material allegations – as well as any reasonable inference to be drawn from them – as true. North Star Int'l v. Arizona Corp. Comm'n, 720F.2d 578, 581, (9th Cir. 1983). The court need not accept conclusory legal assertions as true. Benson v. Arizona State Bd. Of Dental Exam'rs, 573 F.2d 272, 275-76, (8yj Cir. 1982).

III. Discussion

The defendants contend that the plaintiff's claims are barred by the Settlement Agreement, are duplicative of the 2003 Complaint, are barred by res judicata and collateral estoppels, are barred because the plaintiff has not exhausted his administrative remedies, are pled with insufficient specificity, are outside this Court's jurisdiction, or otherwise fail to state a claim on which relief can be granted.

A. Federal Claims Against Sony and its Employees

The Court construes Henderson's allegations of discrimination, harassment, retaliation, and whistle blower retaliation as arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5. The plaintiff's federal allegations involve three distinct sets of claims. First, the plaintiff's allegations refer to employment-related events that occurred prior to the Settlement Agreement, when he was still an employee at Sony. Second, the plaintiff appears to reassert claims that were part of his 2003 Complaint. Finally, the plaintiff's allegations refer to events that are unrelated to, and post-date, the 2003 Complaint.

1. Claim Relating to Events That Allegedly Occurred Prior to the Settlement Agreement

The plaintiff alleges that he was the victim of discrimination, harassment, retaliation, and whistle blower retaliation while employed by Sony. (Compl. at 3-5.) Sony contends that these claims are barred by the terms of the Settlement Agreement, under which the plaintiff waived all known and unknown claims against Sony and its employees.[1]

[1] The settlement Agreement provides in pertinent part:

7. Complete Release of All Claims Known or Unknown

As a material inducement to the company to enter into this Agreement, Henderson hereby

irrevocably and unconditionally releases, acquits and forever discharges the Company and each of the Company's owners, shareholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, divisions, subsidiaries, affiliates (and agents, directors, officers, employees, representatives and attorneys of such divisions, subsidiaries and affiliates), and all persons acting by, through, or in concert with any one of them (collectively "Releasees") and each of them, from any and all charges, grievances, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, known or unknown ("Claim" or Claims"), which Henderson now has, owns or holds, or claims to have, own, or hold, or which Henderson at any time up to and through the date of this Agreement had, owned, or held, or claimed to have, own or hold against any of the Releasees, specifically including but not limited to any Claims under Title VII of the Civil Rights Act of 1964, the Americans with disabilities Act, the Family and Medical Leave Act, the Age Discrimination in Employment Act, the National Labor Relations Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code, or any other statute or law prohibiting discrimination in employment,

and any Claims arising in any way out of Henderson's employment with the Company or termination thereof, including but not limited to all claims based on contract, collective bargaining agreement, common law and/or statute.
(Sony's Request for Judicial Notice in Support of Motion to Dismiss, Ex. 8, Settlement Agreement at 3-4) (emphasis added).

A person who releases claims as part of a settlement agreement is barred from bringing such claims. Pardi v. Kaiser Found. Hosps., 389 F.3d 840 (9th Cir. 2004).

The plaintiff does not dispute that he released the claims against Sony and its employees, but contends that he should be permitted to reassert the claims because he signed the Settlement Agreement under "duress." (Compl. at 7.) He alleges that he was "severely depressed", had a "severe anxiety disorder," and was suffering from post traumatic stress disorder. (Id.) The plaintiff has not cited, nor has the Court own its own discovered, and legal authority suggesting that a person's fragile mental condition constitutes "duress." Rather, duress is "a threat of harm made to compel a person to do something against his or her will or judgment...." Black's Law Dictionary 542 (*the d. 2004); see also Trans-Sterling, Inc. v. Bible, 804 F.2d 525, 529 (9th Cir. 1986) (finding that a settlement agreement was not unenforceable and that there had been no duress because threat by one party to sue

another was not "wrongful" act, but negotiation tactic, and did not force another party to involuntarily enter agreement). The plaintiff has not alleged that Sony made any "wrongful" threats. Therefore, the Court finds that the plaintiff's statements do not allege actual duress. Further, the Court has not found any legal authority suggesting that the plaintiff's release of claims in the Settlement Agreement is enforceable because he was depressed, anxious, or experiencing post-traumatic stress disorder. Accordingly, the Court finds that the Settlement Agreement is not unenforceable on these grounds.

Based on the foregoing, the Court finds that the plaintiff is barred from asserting claims against Sony and its employees that were released under the Settlement Agreement. Accordingly, the Court dismisses these claims with prejudice.

2. Claims Duplicative of the 2003 Complaint

To the extent that the plaintiff is stating claims aginst Sony, John Calley, Raymond Smith, and Mary Burke for harassment, discrimination, retaliation, defamation, wrongful termination, whistle blower retaliation and fraud based on alleged events that were the subject of the 2003 Complaint, which covered the time period between the Settlement Agreement and the 2003 Complaint, these claims are barred because they are duplicative of the claims that have already been litigated and are pending before the Ninth Circuit. See Zerilli v. Evening News

Ass'n, 628 F.2d 217, 222 (D.C. Cir. 1980) (finding that a court correctly dismissed a duplicative action). Therefore, the Court dismisses these claims with prejudice.

3. Claims Based on Allegations Unrelated to the 2003 Complaint

The plaintiff alleges that Sony, Russo, Bershad, and perhaps other Sony employees, violated his rights by refusing to give him a positive reference. Specifically, the plaintiff states, "I have evidence that Linda Berdshad and Kim Russo have continued to defame me, and have sttempted to keep me from getting a good reference, and in turn, have hindered my efforts to get a job, after I left Sony." (Compl. at 6.) A former employee can bring an action under Title VII for continued retaliation after the termination of employment. See Obrien v. Sky Chefs, Inc., 670 F.2d 864. 869 (9th Cir. 1982) (claim for retaliation can be based on former employer's delivery of bad recommendations after termination), overruled on other grounds by Antio v. Wards Cove Packing Co., Inc., 810 F.2d 1477 (9th Cir. 1987); see also Pantchenko v. C.B. Dolge Co., 581 F.2d 1052, 1055 (2d Cir. 1978) (employer is liable for retaliatory refusal to provide a former employee with a letter of recommendation). Therefore, the Court construes the plaintiff's allegations regarding the continued interference with the plaintiff's employment search as a federal claim against Sony under Title VII.[2]

[2]Individuals cannot be held personally liable under Title VII. See Miller v. Maxwell's Int'l, Inc., 991 F.2d 583, 587, (9th Cir. 1993). Therefore, inasmuch as the plaintiff's Title VII claim regarding the employment reference implicates Russo and Bershad, it is dismissed with prejudice.

However, to state a claim under Title VII, the plaintiff must first file a timely charge with the EEOC asserting the claim, receive a "right-to-sue" letter from the EEOC on the claim, and file a civil complaint on the claim in federal court within ninety days of receiving the right-to-sue letter. 42 U.S.C. Section 2000e-5(b), (c), (e), (f) (1); Stache v. Int'l Union of Bricklayers, 852 F.2d 1231, 1233, (9th Cir. 1988); Nelmida v. Shelly Eurocars, Inc., 112 F.3d 380, 384, (9th Cir. 1997). The plaintiff has not alleged that he obtained a letter from the EEOC authorizing him to file suit based on the alleged refusal by Sony to provide the plaintiff with a positive employment reference. The plaintiff suggests that because he obtained a right-to-sue letter in prior actions involving some of the same defendants, he has exhausted his administrative remedies with respect to his new claims. A right-to-sue letter does not, however, authorize a party to sue a particular defendant indefinitely. Rather, a right-to-sue letter authorizes a civil action based on the allegations in administrative complaint that was actually reviewed by the EEOC> Because the plaintiff has not alleged that the EEOC

provided him with a right-to-sue letter authorizing claims of continued, post-employment harassment related to employment references, the plaintiff has not exhausted his administrative remedies with regard to these claims. Therefore, the Court dismisses these claims without prejudice.[3]

[3]The plaintiff's allegation that Sony and its employees violated an unspecified federal right by interfering with his ability to obtain workers' compensation benefits is also dismissed. Inasmuch as the plaintiff's allegation suggests that his Constitutional due process rights were violated, the claim must be dismissed with prejudice because private citizens cannot be sued for the violation of due process unless they are acting under color of state law. See 42 U.S.C. Section 1983. Inasmuch as the plaintiff's allegation is actually a discrimination, harassment, or retaliation claim under Title VII, it must be dismissed without prejudice because the plaintiff has not alleged that he exhausted his administrative remedies.

B. Federal Claims Against Mellon Bank and Its Employees

In his complaint, the plaintiff alleges that Mellon's conduct amounts to harassment and discrimination.[4] The Court construes the plaintiff's harassment and discrimination claims as actios brought pursuant to Title VII. Title VII requires that the party seeking redress bring an action against an "employer."

See 42 U.S.C Section 2000e-2; EEOC v. Pacific Maritime Ass'n, 351 F.3d 1270, 1274 (9th Cir. 2003) (liability of an indirect employer requires that employer to have some control over the direct employer and that they engage in discriminatory interference).

[4] The plaintiff's complaint alleges:
Harassment, discrimination at Mellon Bank that Helped Lead to Punishment and Termination at Sony.
I wrote to Mellon Bank about some poor service and harassment I received from one employee. I had spoken with her on the phone. Her name was Connie. I do not know her last name. I believe that was harassment and discrimination on the basis of sex, medical condition, and maybe other protected groups. (Compl. 6:9-17.)

The plaintiff does not allege that he was an employee of Mellon. Nor has he alleged that Mellon was an indirect employer with control over Sony. Accordingly, inasmuch as he has brought a Title VII claim against Mellon or its employees, it is dismissed with prejudice.

C. State Claims against Sony, Mellon, and Paul Hastings and their Employees

The plaintiff's remaining claims against all defendants arise under state law. When a district court dismisses all federal claims before trial, it is appropriate to dismiss the supplemental state claims as well. 28 U.S.C. Section 1367 © (3). Accordingly, the Court

dismisses Henderson's state law claims without prejudice.

IV. Conclusion

For the foregoing reasons, the Court grants the defendants' motions to dismiss the complaint. The plaintiff's federal claims, inasmuch as they are barred by the Settlement Agreement or duplicative of the 2003 Complaint are dismissed with prejudice. Additionally, the plaintiff's federal claims against Mellon and its employees are dismissed with prejudice. The remaining federal and state claims against all defendants are dismissed without prejudice.

IT IS SO ORDERED.

Dated: June 20, 2005

DEAN D. PREGERSON
United States District Judge